

REFERENCE TITLE: prisoners; release credits

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HB 2808

Introduced by
Representatives Blackman: Biasiucci, Bolick, Carroll, Dunn, Engel,
Fillmore, Hernandez A, Lawrence, Osborne, Pawlik, Payne, Pierce, Rivero,
Roberts, Rodriguez, Shah, Sierra, Toma, Townsend, Udall, Weninger

AN ACT

AMENDING SECTIONS 31-229.02, 31-281 AND 41-1604.07, ARIZONA REVISED
STATUTES; RELATING TO PRISONERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 31-229.02, Arizona Revised Statutes, is amended
3 to read:

4 31-229.02. Functionally literate inmates; release eligibility

5 A. Except as provided in section 41-1604.07, subsection ~~F~~ G, ~~if~~ an
6 inmate ~~fails to achieve~~ WHO DOES NOT HAVE functional literacy at an eighth
7 grade literacy level before the inmate becomes eligible for release
8 pursuant to section 41-1604.07, ~~the inmate~~ is not eligible to begin the
9 inmate's term of community supervision until either the inmate achieves an
10 eighth grade functional literacy level as measured by standardized
11 assessment testing or the inmate serves the full term of imprisonment
12 imposed by the court, whichever first occurs. **THE DIRECTOR SHALL MAKE THE**
13 **DETERMINATION OF ELIGIBILITY AND PROVIDE THE STANDARDIZED ASSESSMENT**
14 **TESTING FOR EACH INMATE BEFORE THE EARLIEST DATE THAT THE INMATE BECOMES**
15 **ELIGIBLE FOR RELEASE.**

16 B. This section does not apply to inmates who are any of the
17 following:

18 1. Unable to meet the functional literacy standard required by
19 subsection A of this section, due to a medical, developmental or learning
20 disability as described in section 31-229, subsection C.

21 2. Classified as level five offenders.

22 3. Foreign nationals.

23 4. Inmates who have less than six months incarceration to serve on
24 commitment to the department.

25 ~~5. Released pursuant to section 41-1604.07, subsection B,~~
26 ~~paragraph 1.~~

27 Sec. 2. Section 31-281, Arizona Revised Statutes, is amended to
28 read:

29 31-281. Transition program; report; definition

30 A. The department shall establish a transition program that
31 provides eligible inmates with transition services in the community for up
32 to ninety days. The department shall administer the transition program
33 and contract with private or nonprofit entities to provide eligible
34 inmates with transition services and shall procure transition services
35 pursuant to title 41, chapter 23.

36 B. The director shall adopt rules to implement this article. The
37 rules shall include:

38 1. Eligibility criteria for receiving a contracted entity's
39 transition services. To be eligible, at a minimum, an inmate shall:

40 (a) Not have been convicted of a sexual offense pursuant to title
41 13, chapter 14 or a violation of title 13, chapter 17.

42 (b) Be classified by the state department of corrections as a low
43 violence risk to the community.

1 (c) Not have been convicted of a violent crime as defined in
2 section 13-901.03 or a domestic violence offense pursuant to section
3 13-3601.

4 (d) Not have any felony detainers.

5 (e) Agree in writing to provide specific information after the
6 inmate is released. The department shall use the information to prepare
7 the report prescribed by subsection D, paragraph 3 of this section.

8 (f) Have made satisfactory progress by complying with all
9 programming on the inmate's individualized corrections plan as determined
10 by the department.

11 (g) Be classified by the department as minimum or medium custody as
12 determined by an objective risk assessment.

13 (h) Not have been found in violation of any major violent rule
14 during the inmate's current period of incarceration or in violation of any
15 other major rule within the previous six months. For the purposes of this
16 subdivision, an accumulation of minor rule violations does not equal a
17 major rule violation.

18 2. A requirement that each contracted entity train mentors or
19 certify that mentors are trained.

20 3. A requirement that the services offered to an inmate include
21 psychoeducational counseling and case management services as determined by
22 the department. The counseling and services may include substance abuse
23 treatment, anger management, cognitive behavioral therapy, parenting
24 skills and family reunification training, further education and job
25 placement.

26 4. A requirement that an inmate may be released pursuant to this
27 article only after the victim has been provided notice and an opportunity
28 to be heard. The department shall provide notice to a victim who has
29 provided a current address or other contact information. The notice shall
30 inform the victim of the opportunity to be heard on the early release.
31 Any objection to the inmate's early release must be made within twenty
32 days after the department has mailed the notice to the victim.

33 C. In awarding contracts under this section the department shall
34 comply with section 41-3751.

35 D. The department shall:

36 1. Conduct an annual study to determine the recidivism rate of
37 inmates who receive a contracted entity's services pursuant to this
38 article. The study shall include the recidivism rate of inmates who have
39 been released from incarceration for a minimum of three years after
40 release.

41 2. Evaluate the inmate and provide the information to the
42 contracted entity.

43 3. Submit a written report to the governor, the president of the
44 senate and the speaker of the house of representatives on or before
45 July 31 of each year and provide a copy of this report to the secretary of

1 state. The report may be submitted electronically. The report shall
2 contain the following information:

3 (a) The recidivism rate of inmates who receive services pursuant to
4 this article, including the recidivism rate of inmates who have been
5 released from incarceration for a minimum of three years after release.

6 (b) The number of inmates who received services pursuant to this
7 article.

8 (c) The number of inmates who were not provided services pursuant
9 to this article and who were on a list waiting to receive services.

10 (d) The types of services provided.

11 (e) The number of inmates who received each type of service
12 provided.

13 4. Provide information about the transition program to all inmates
14 who are not serving a life sentence on admission to prison and to any
15 inmate who is potentially eligible for the transition program six months
16 before the inmate's eligibility date. The information must include all of
17 the admission requirements to the transition program, including the
18 disqualifying factors under this section.

19 E. Notwithstanding subsection B, paragraph 1 of this section, if an
20 inmate agrees to comply with any condition that is established and
21 required by section 41-1604.07, subsection ~~F~~ G, has been convicted of the
22 possession or use of marijuana pursuant to section 13-3405, subsection A,
23 paragraph 1, possession or use of a dangerous drug pursuant to section
24 13-3407, subsection A, paragraph 1, possession or use of a narcotic drug
25 pursuant to section 13-3408, subsection A, paragraph 1 or possession or
26 use of drug paraphernalia pursuant to section 13-3415, subsection A and is
27 not concurrently serving another sentence for an offense that is not
28 listed in this subsection, the inmate is eligible for and shall be
29 released to enter the transition program. The director may not exclude an
30 inmate who is eligible for the transition program pursuant to this
31 subsection because the inmate does not have a place to reside before being
32 released, except that the director shall exclude an inmate who has any of
33 the following:

34 1. Previously been convicted of a violent crime as defined in
35 section 13-901.03 or an offense listed in title 13, chapter 14 or 35.1.

36 2. A felony detainer.

37 3. Been found to be in violation of a major violent rule during the
38 inmate's current period of incarceration or to be in violation of any
39 other major rule within the previous six months. For the purposes of this
40 paragraph, an accumulation of minor rule violations does not equal a major
41 rule violation.

42 4. Previously been released pursuant to this section and violated a
43 term of the inmate's release.

1 5. Failed to achieve functional literacy as required by section
2 41-1604.07, subsection ~~F~~ F, unless the inmate is enrolled in a program
3 that prepares the inmate to achieve functional literacy.

4 6. Been classified by the department as close or maximum custody as
5 determined by a current and objective risk assessment.

6 7. Refused enrollment in or been removed for poor behavior from a
7 major self-improvement program within the previous eighteen months unless
8 the inmate has subsequently enrolled in and completed the major
9 self-improvement program.

10 F. For the purposes of this section, "recidivism" means
11 reincarceration in the department for any reason.

12 Sec. 3. Section 41-1604.07, Arizona Revised Statutes, is amended to
13 read:

14 41-1604.07. Earned release credits; recidivism reduction
15 release credits; forfeiture; restoration;
16 released prisoner health care; annual report

17 A. Pursuant to rules adopted by the director, each prisoner who is
18 in the eligible earned release credit class shall be allowed an earned
19 release credit as set forth in subsection B of this section, including
20 time served in county jails, except for those prisoners who are sentenced
21 to serve the full term of imprisonment imposed by the court.

22 B. The earned release credit is:

23 1. ONE DAY FOR EVERY SIX DAYS SERVED.

24 ~~1.~~ 2. IN ADDITION TO THE EARNED RELEASE CREDIT UNDER PARAGRAPH 1
25 OF THIS SUBSECTION, ~~three~~ ONE AND ONE-HALF days for every ~~seven~~ SIX days
26 served if the prisoner:

27 ~~(a) Was sentenced to a term of imprisonment for the possession or~~
28 ~~use of marijuana pursuant to section 13-3405, subsection A, paragraph 1,~~
29 ~~the possession or use of a dangerous drug pursuant to section 13-3407,~~
30 ~~subsection A, paragraph 1, the possession or use of a narcotic drug~~
31 ~~pursuant to section 13-3408, subsection A, paragraph 1 or the possession~~
32 ~~of drug paraphernalia pursuant to section 13-3415.~~

33 ~~(b) Has successfully completed a drug treatment program or other~~
34 ~~major self-improvement program provided by the department during the~~
35 ~~prisoner's term of imprisonment.~~

36 ~~(c)~~ (a) IS NOT SERVING A SENTENCE FOR OR has not previously been
37 convicted of a violent or aggravated felony as defined in section 13-706.

38 (b) HAS SUCCESSFULLY COMPLETED A DRUG TREATMENT PROGRAM OR OTHER
39 MAJOR SELF-IMPROVEMENT PROGRAM PROVIDED BY THE DEPARTMENT DURING THE
40 PRISONER'S TERM OF IMPRISONMENT OR DURING THE PRISONER'S TERM OF
41 IMPRISONMENT HAS ACTIVELY PARTICIPATED FOR A MINIMUM OF SIX MONTHS IN AN
42 INTERGOVERNMENTAL AGREEMENT OR AN ARIZONA CORRECTIONAL INDUSTRIES WORK
43 PROGRAM THAT IS APPROVED BY THE DEPARTMENT.

1 ~~2. One day for every six days served if the prisoner was sentenced~~
2 ~~to a term of imprisonment for an offense not listed in paragraph 1 of this~~
3 ~~subsection.~~

4 C. NOTWITHSTANDING SUBSECTION B OF THIS SECTION, A PREVIOUS
5 CONVICTION FOR A VIOLENT OR AGGRAVATED FELONY AS DEFINED IN SECTION 13-706
6 ONLY APPLIES TO A PRISONER WHO EITHER:

7 1. COMMITTED THE OFFENSE WHEN THE PRISONER WAS AT LEAST EIGHTEEN
8 YEARS OF AGE.

9 2. IF THE PRISONER WAS UNDER EIGHTEEN YEAR OF AGE, COMMITTED TWO OR
10 MORE VIOLENT OR AGGRAVATED FELONIES ON SEPARATE OCCASIONS AND THE CURRENT
11 FELONY OFFENSE WAS COMMITTED WITHIN TEN YEARS AFTER THE PRISONER COMPLETED
12 THE PREVIOUS SENTENCE AS A JUVENILE.

13 ~~E.~~ D. Release credits earned by a prisoner pursuant to subsections
14 A and B of this section shall not reduce the term of imprisonment imposed
15 by the court on the prisoner.

16 ~~F.~~ E. On reclassification of a prisoner resulting from the
17 prisoner's failure to adhere to the rules of the department or failure to
18 demonstrate a continual willingness to volunteer for or successfully
19 participate in a work, educational, treatment or training program, the
20 director may declare all ~~OR A PORTION OF THE~~ release credits earned by the
21 prisoner forfeited. In the discretion of the director, forfeited release
22 credits may subsequently be restored. The director shall maintain an
23 account of release credits earned by each prisoner.

24 ~~F.~~ F. A prisoner who has reached the prisoner's earned release
25 date or sentence expiration date shall be released to begin the prisoner's
26 term of community supervision imposed by the court or term of probation if
27 the court waived community supervision pursuant to section 13-603, except
28 that the director may deny or delay the prisoner's release to community
29 supervision or probation if the director believes the prisoner may be a
30 sexually violent person as defined in section 36-3701 until the screening
31 process is complete and the director determines that the prisoner will not
32 be referred to the county attorney pursuant to section 36-3702. If the
33 term of community supervision is waived, the state department of
34 corrections shall provide reasonable notice to the probation department of
35 the scheduled release of the prisoner from confinement by the department.
36 If the court waives community supervision, the director shall issue the
37 prisoner an absolute discharge on the prisoner's earned release credit
38 date. A prisoner who is released on the earned release credit date to
39 serve a term of probation is not under the control of the state department
40 of corrections when community supervision has been waived and the state
41 department of corrections is not required to provide parole services.

42 ~~F.~~ G. Notwithstanding subsection ~~F.~~ F of this section, a prisoner
43 who ~~fails to achieve~~ HAS NOT DEMONSTRATED functional literacy at an eighth
44 grade literacy level BY FAILING THE STANDARDIZED ASSESSMENT TEST shall not
45 be released to begin the prisoner's term of community supervision until

1 either the prisoner achieves an eighth grade functional literacy level as
2 measured by standardized assessment testing, the prisoner is released to
3 enter the transition program established ~~by~~ PURSUANT TO section 31-281 and
4 is enrolled in a program that prepares the prisoner to achieve functional
5 literacy or the prisoner serves the full term of imprisonment imposed by
6 the court, whichever first occurs. This subsection does not apply to
7 inmates who either:

8 1. Are unable to meet the functional literacy standard required by
9 section 31-229.02, subsection A due to a medical, developmental or
10 learning disability as described in section 31-229, subsection C.

11 2. Are classified as level five offenders.

12 3. Are foreign nationals.

13 4. Have less than six months of incarceration to serve on
14 commitment to the department.

15 ~~5. Are released pursuant to subsection B, paragraph 1 of this~~
16 ~~section.~~

17 ~~G.~~ H. The department shall establish conditions of community
18 supervision it deems appropriate in order to ensure that the best
19 interests of the prisoner and the citizens of this state are served. As a
20 condition of community supervision, the director:

21 1. May order a released prisoner to participate in an appropriate
22 drug treatment or education program that is administered by a qualified
23 agency, organization or individual approved by the department of health
24 services and that provides treatment or education to persons who abuse
25 controlled substances. THE DIRECTOR MAY ORDER each person who is enrolled
26 in a drug treatment or education program ~~shall~~ TO pay for the cost of
27 participation in the program to the extent of the person's financial
28 ability.

29 2. May order additional conditions, including participation in a
30 rehabilitation program or counseling and performance of community
31 restitution work.

32 3. ~~Unless the prisoner is released pursuant to subsection B,~~
33 ~~paragraph 1 of this section,~~ May order a prisoner to apply for health care
34 benefits through the Arizona health care cost containment system before
35 being released. The state department of corrections shall enter into an
36 enrollment suspense agreement with the Arizona health care cost
37 containment system to reinstate benefits for prisoners who were sentenced
38 to twelve months or less and who were previously enrolled in the Arizona
39 health care cost containment system immediately before incarceration. For
40 all other prisoners, the state department of corrections shall submit a
41 prerelease application to the Arizona health care cost containment system
42 at least thirty days before the prisoner's release date. The state
43 department of corrections may coordinate with community-based
44 organizations or the department of economic security to assist prisoners

1 in applying for enrollment in the Arizona health care cost containment
2 system.

3 4. Shall impose, if the prisoner was convicted of a violation of
4 sexual conduct with a minor under fifteen years of age or molestation of a
5 child under fifteen years of age, a prohibition on residing within four
6 hundred forty feet of a school or its accompanying grounds. For the
7 purposes of this paragraph, "school" means any public, charter or private
8 school where children attend classes.

9 ~~H.~~ I. The director may exchange a prisoner's health care
10 information with the regional behavioral health authority or Arizona
11 health care cost containment system justice system contact to facilitate
12 the transition to care for released prisoners to access the full array of
13 behavioral and physical health care services, including medication,
14 counseling, case management, substance abuse treatment, and parenting
15 skills and family reunification training. The director shall adopt
16 policies and procedures that establish a care team to convene and discuss
17 the services and resources, including housing and employment supports,
18 that may be needed for the released prisoner to safely transition into the
19 community. The care team shall be managed by the regional behavioral
20 health authority or Arizona health care cost containment system contractor
21 and may include the health care provider that is identified by and has a
22 contract with the regional behavioral health authority or Arizona health
23 care cost containment system contractor. The care team may also include
24 representatives of nonprofit organizations that specialize in assisting
25 prisoners who are transitioning back into the community and other
26 organizations that link prisoners to additional services, including
27 housing and employment.

28 ~~I.~~ J. If a prisoner who reaches the prisoner's earned release
29 credit date refuses to sign and agree to abide by the conditions of
30 supervision before release on community supervision, the prisoner shall
31 not be released. When the prisoner reaches the sentence expiration date,
32 the prisoner shall be released to begin the term of community
33 supervision. If the prisoner refuses to sign and agree to abide by the
34 conditions of release, the prisoner shall not be released on the sentence
35 expiration date and shall serve the term of community supervision in
36 prison. The department is required to supervise any prisoner on community
37 supervision until the period of community supervision expires. The
38 department may bring a prisoner who is in violation of the prisoner's
39 terms and conditions before the board of executive clemency.

40 ~~J.~~ K. The director, pursuant to rules adopted by the department,
41 shall authorize the release of any prisoner on the prisoner's earned
42 release credit date to serve any consecutive term imposed on the prisoner.
43 The release shall be for the sentence completed only. The prisoner shall
44 remain under the custody and control of the department. The director may

1 authorize the rescission of the release to any consecutive term if the
2 prisoner fails to adhere to the rules of the department.

3 ~~K.~~ L. If a prisoner absconds from community supervision, any time
4 spent before the prisoner is returned to custody is excluded in
5 calculating the remaining period of community supervision.

6 ~~L.~~ M. A prisoner shall forfeit five days of the prisoner's earned
7 release credits:

8 1. If the court finds or a disciplinary hearing held after a review
9 by and recommendations from the attorney general's office determines that
10 the prisoner does any of the following:

11 (a) Brings a claim **KNOWING IT IS** without substantial justification.

12 (b) Unreasonably expands or delays a proceeding.

13 (c) Testifies falsely or otherwise presents false information or
14 material to the court.

15 (d) Submits a claim that is intended solely to harass the party it
16 is filed against.

17 2. For each time the prisoner tests positive for any prohibited
18 drugs during the period of time the prisoner is incarcerated.

19 ~~M.~~ N. If the prisoner does not have five days of earned release
20 credits, the prisoner shall forfeit the prisoner's existing earned release
21 credits and shall be ineligible from accruing earned release credits until
22 the number of earned release credits the prisoner would have otherwise
23 accrued equals the difference between five days and the number of existing
24 earned release credit days the prisoner forfeits pursuant to this section.

25 ~~N. O. The director may authorize temporary release on inmate
26 status of eligible inmates~~ Pursuant to rules adopted by the director **AND
27 POSTED ON THE DEPARTMENT'S WEBSITE, THE DIRECTOR MAY AUTHORIZE TEMPORARY
28 RELEASE ON INMATE STATUS OF ELIGIBLE INMATES** within ninety days of any
29 other authorized release date. The release authorization applies to any
30 inmate who has been convicted of a drug offense, who has been determined
31 to be eligible for participation in the transition program pursuant to
32 section 31-281 and who has agreed to participate in the transition
33 program.

34 ~~O.~~ P. On admission, the department shall provide notice to any
35 prisoner who is potentially eligible for earned release credit pursuant to
36 subsection B, ~~paragraph 1~~ of this section. The notice must include all of
37 the eligibility requirements under this section.

38 ~~P.~~ Q. ~~The department shall do~~ **ON OR BEFORE DECEMBER 31 OF EACH
39 YEAR, THE DIRECTOR SHALL PREPARE AND SUBMIT A REPORT TO THE GOVERNOR, THE
40 PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
41 AND SHALL PROVIDE A COPY OF THE REPORT TO THE SECRETARY OF STATE. THE
42 REPORT SHALL INCLUDE** all of the following **INFORMATION:**

43 1. ~~Annually report~~ The recidivism rate of prisoners **WHO ARE**
44 released pursuant to subsection B, ~~paragraph 1~~ of this section for a
45 minimum of three years after release.

1 ~~2. Report the following information at the end of each fiscal~~
2 ~~quarter:~~

3 ~~(a)~~ 2. The number of prisoners BY INSTITUTION who received earned
4 release credits PURSUANT TO SUBSECTION B OF THIS SECTION for each month of
5 the reporting period and the percentage of the total prison population
6 that received earned release credits.

7 ~~(b)~~ 3. The number of prisoners who were eligible for earned
8 release credit pursuant to subsection B, ~~paragraph 1~~ of this section and
9 for each of these prisoners, the following information:

10 ~~(i)~~ (a) The most serious crime for which each prisoner is
11 receiving earned release ~~credit~~ CREDITS.

12 ~~(ii)~~ (b) The mean and median length of the prison sentences.

13 ~~(iii)~~ (c) Whether the prisoner received earned release credits
14 each month of the reporting period.

15 ~~(c)~~ 4. The number of prisoners BY INSTITUTION who participated in
16 ~~a program~~ PROGRAMMING that is described in subsection B, ~~paragraph 1,~~
17 ~~subdivision (b)~~ of this section in each month of the reporting period,
18 including the percentage of the total prison population that has
19 participated in those programs.

20 5. THE NUMBER OF EARNED RELEASE CREDITS FORFEITED BY PRISONERS BY
21 INSTITUTION IN EACH MONTH OF THE REPORTING PERIOD AND THE REASON WHY THE
22 EARNED RELEASE CREDIT WAS FORFEITED.

23 ~~(d)~~ 6. The number of prisoners BY INSTITUTION who are eligible for
24 release into the transition program established pursuant to section 31-281
25 in each month of the reporting period and the percentage of the total
26 prison population that is eligible for release into the transition
27 program. For eligible prisoners, the report shall include the following
28 information:

29 ~~(i)~~ (a) The most serious crime for which each prisoner is serving
30 a sentence.

31 ~~(ii)~~ (b) The mean and median length of the prison sentences.

32 ~~(iii)~~ (c) The mean and median length of time served by the
33 prisoners.

34 ~~(e)~~ 7. The number of prisoners who are enrolled in the transition
35 program in each month of the reporting period, including the percentage of
36 the total prison population that is enrolled in the transition program.
37 For enrolled prisoners, the report shall include the following
38 information:

39 ~~(i)~~ (a) The most serious crime for which each prisoner is serving
40 a sentence.

41 ~~(ii)~~ (b) The mean and median length of the prison sentences.

42 ~~(iii)~~ (c) The mean and median length of time served by the
43 prisoners.

1 ~~(f)~~ 8. The number of prisoners BY INSTITUTION who are released
2 into the transition program in each month of the reporting period,
3 including the percentage of the total prison population that is released
4 into the transition program. For released prisoners, the report shall
5 include the following information:

6 ~~(i)~~ (a) The most serious crime for which each prisoner is serving
7 a sentence.

8 ~~(ii)~~ (b) The mean and median length of the prison sentences.

9 ~~(iii)~~ (c) The mean and median length of time that the prisoners
10 served.

11 ~~(g)~~ 9. The six-month success, return to custody and new conviction
12 rates for prisoners who are released to a transition program.

13 ~~(h)~~ 10. The one-year success, return to custody and new conviction
14 rates for prisoners who are released to a transition program.

15 ~~(i)~~ 11. The two-year success, return to custody and new conviction
16 rates for prisoners who are released to a transition program.

17 ~~(j)~~ 12. The three-year success, return to custody and new
18 conviction rates for prisoners who are released to a transition program.

19 ~~(k)~~ 13. The number of prisoners BY INSTITUTION who received
20 treatment for substance abuse during the first half of the prisoner's
21 total sentence and the percentage of the total prison population that
22 received treatment for substance abuse during the first half of the
23 prisoners' total sentence. For prisoners who received treatment for
24 substance abuse according to this subdivision, THE report shall include
25 the following information:

26 ~~(i)~~ (a) The most serious crime committed by each prisoner.

27 ~~(ii)~~ (b) The mean and median length of the prison sentences.

28 ~~(iii)~~ (c) Whether the prisoners received treatment for substance
29 abuse each month of the reporting period.

30 Sec. 4. Effective date

31 This act is effective from and after December 31, 2020.